IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 419 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHENGAR GALBA RAVAL & ORS. - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1 - 6.
MR RC KODEKAR APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 11/05/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellants-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 31st March, 1998, passed by the learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No.98 of 1996 whereby they were sentenced to undergo rigorous imprisonment for life and fine of Rs.1000/-, in default, to undergo further twelve months S.I. for the charge under Section 302 read with Section 149 of the Indian Penal Code. They were sentenced to undergo rigorous imprisonment for five years and fine of Rs.800/-, in default, to undergo six months S.I. for the charge under Section 307 read with Section 149 of the Indian Penal Code. They were sentenced to undergo one and two years and fine of Rs.200/- and Rs.400/-, in default, to undergo two and four months S.I. respectively for the charge under Section 147 and 148 of the Indian Penal Code. The appellant-accused no.5 was also sentenced to undergo three months rigorous imprisonment and fine of Rs.200/-, in default, to undergo one month S.I.

for the charge under Section 504 of the Indian Penal Code. The learned Additional Sessions Judge, Banaskantha at Palanpur ordered to run all the sentences concurrently.

2. Short facts of the case is that the complainant viz., Bhikhabhai Laxmanbhai Raval was residing at Ravalvas, Village : Vithodar, Taluka : Deesa along with his family and doing agriculture work. A relative of the complainant viz., Raval Dahyabhai Dalachhabhai had some disputes with the appellant-accused no.6 viz., Galaba Shankala Raval herein. Both filed various complaints and undertook various litigations into the Court and same were going on at the relevant point of time. For the purpose of attending the Court matters, the complainant being relative of Raval Dahyabhai Dalachhabhai used to accompany him. Since this was not liked by the appellant-accused no.6 viz., Galaba Shankala Raval and their son, they had grudge against the complainant and his family four years prior to the incident. On 23.08.1995 at about 10:00 a.m., when the complainant and his wife Ambaben were sitting at Talegadh bus stop as they wanted to go to Deesa Hospital due to ill-health of the wife of the complainant, the original accused nos.1 to 6 came there in a camel cart with deadly weapons and

started abusing the complainant and telling that since he is coming in their way, various matters are not being settled between them. Thereafter, they assaulted the complainant with deadly weapon. Appellant-accused no.1-Khengar Galaba Raval gave dharia blow on the head, appellant-accused no.2-Mana Galaba Raval gave dharia blow on the left hand, the appellant-accused no.3-Popat Galaba Raval gave stick blow on the right hand, the appellant-accused no.4-Pira Galaba Raval gave dharia blow on the left leg and thigh, the appellant-accused no.5-Jora Galaba Raval gave axe blow on the head of the complainant and the appellant-accused no.6-Galaba Shankala Raval gave stick blow on the right hand of the complainant and as a result of that, the complainant became unconscious. At that time, the wife of the complainant came to his rescue and, hence, the accused persons also caused injuries to her on head and hand. On raising screams, one Raval Ratubhai Vihabhai (P.W.No.5) and his wife, Reshamben (P.W.No.2) reached the scene of offence and, hence, the accused persons fled away from the scene of offence with deadly weapon in a camel cart. Thereafter, son of the complainant viz., Pira Bhikha (P.W.No.4) along with other family members came to the scene of offence and took the

complainant and his wife to Deesa Government Hospital in an auto rickshaw at about 12:15 p.m. Since it was a medico-legal case, the Medical officer of Deesa Hospital telephonically informed Deesa Rural Police Station about the incident. In pursuance of same, same has been registered as telephonic vardhy and P.I., Shri B.K. Chavda came to Deesa Hospital and recorded the complaint given by complainant, Bhima Laxman. Same has been sent along with forwarding letter to P.S.O., Deesa Rural Police Station, for the purpose of registering the same and, accordingly, it has been registered as Deesa Rural Police Station C.R.No.I-204/1995 for the offence under Sections 307, 326, 324, 143, 147, 148 and 149 of the Indian Penal Code and under Section 135 of the Bombay Police Act at about 13:25 p.m.

3. On the basis of the complaint, the investigation was commenced and same has been handed over to P.I., Mr.Chavda (P.W.No.15) for investigation and he wrote yadi to the Executive Magistrate for the purpose of recording the dying declaration of the complainant and his wife viz., Ambaben (deceased) and also wrote yadi to Medical Officer for treatment. Thereafter, P.I., Mr.Chavda went to the scene of offence, drew the scene of offence

panchnama and recorded the statements of Reshamben, Amansinhbhai, Ratubhai and Agarben. As Reshamben had also received injury, yadi was also given to her also. He also tried to search accused. Since he came to know that injured Ambaben, wife of the complainant succumbed to the injuries, he sent report to P.S.O. for addition of Section 302 of the Indian Penal Code. Thereafter, the complainant was shifted to Palanpur Hospital and because of the serious condition of the complainant, yadi was sent to Palanpur Police Station for recording the dying declaration. Thereafter, further statements of various witnesses were recorded. On the same day, as P.I., Mr.Chavda (P.W.No.15) was transferred to Ahmedabad, investigation was handed over to P.I., Shri C.L. Rathod, along with investigation papers and case diary. P.I., Mr.Rathod searched the accused persons and also recorded the statements of witness viz., Bachu, Surajben etc., and also seized the clothes of the deceased viz., Amaben, which were produced by the Head Constable viz., Nathabhai. Meanwhile, as accused produced themselves before the Police Station, they were arrested. As the appellant-accused no.3 showed willingness to produce the weapon used by them in the incident and which hid, preliminary panchnama

to that effect has been prepared and, thereafter, three dharias, two sticks and one axe produced by the appellant-accused no.3 have been seized under the discovery panchnama. He also recorded the statements of auto rickshaw driver viz., Mahendrakumar, who took the complainant to hospital and, thereafter, he has also seized the clothe of the complainant after preparing panchnama to that effect. Thereafter, he sent the muddamal to F.S.L., Ahmedabad along with forwarding letter and receipt issued by the F.S.L., Ahmedabad was kept with the investigation file. He also made arrangements for preparing the map of scene of offence through Circle Inspector. He also collected copies of various complaints which have been filed by both the parties prior to the incident. On completion of the investigation, on the basis of the material collected against the appellant-accused, since the Investigating Officer found a prima facie case against the appellant-accused, he submitted charge-sheet before the Learned Judicial Magistrate, First Class, Deesa on 16.11.1995, which came to be numbered as Criminal Case No.4307/1995. As the case registered against the appellants-accused was exclusively triable by the Court of Sessions, the Learned Learned Judicial Magistrate, First Class,

Deesa committed the case to the Court of Sessions under Section 209 of the Criminal Procedure Code and on receiving the same, it has been numbered as Sessions Case No.98 of 1996 and same has been sent into the Court of learned Additional Sessions Judge, Banaskantha at Palanpur for the purpose of disposing the same on merits.

4. The Learned Additional Sessions Judge, Banaskantha at Palanpur framed charge vide Exh.8 against all accused persons on 14.02.1997, wherein they pleaded not guilty and claimed to be tried.

5. To prove the case against the appellant-accused, the prosecution examined the following witnesses :-

(1) Prosecution Witness No.1 viz., Bhikhabhai Laxmanbhai Raval (Complainant) at Exh.17.

(2) Prosecution Witness No.2 viz., Reshamben Ratubhai (Eyewitness) at Exh.24.

(3) Prosecution Witness No.3 viz., Ranasibhai Ratubhai (Eyewitness) at Exh.25.

(4) Prosecution Witness No.4 viz., Pirabhai Bhikhabhai at Exh.26.

(5) Prosecution Witness No.5 viz., Ratubhai Vihabhai (Eyewitness) at Exh.29.

(6) Prosecution Witness No.6 viz., Samjibhai Khoda (Panch Witness) at Exh.31.

(7) Prosecution Witness No.7 viz., Rameshbhai

Hirabhai Vaghela (Panch Witness) at Exh.33.

(8) Prosecution Witness No.8 viz., Bachubhai Kapurji Thakor (Panch Witness) at Exh.35.

(9) Prosecution Witness No.9 viz., Bhikhabhai Dohjibhai Parmar (Medical Officer, Palanpur Civil Hospital) at Exh.43.

(10) Prosecution Witness No.10 viz., Pravinbhai Vaghjibhai Trivedi (Circle Inspector, who drew map of scene of offence at Exh.58.

(11) Prosecution Witness No.11 viz., Ishvardan Dhiraji (P.S.O.) at Exh.61.

(12) Prosecution Witness No.12 viz., Javansing Nathuji (P.S.O., who drew panchnama of seizing clothes) at Exh.63.

(13) Prosecution Witness No.13 viz., Punamaji Hakamaji Bhati (Medical Officer, Deesa Government Hospital) at Exh.64.

(14) Prosecution Witness No.14 viz., Chandansing Lakhsing Rathod (Police Inspector, - Investigating Officer) at Exh.70.

(15) Prosecution Witness No.15 viz., Bopalsinhji Kesharisinhji Chavda (Police Inspector & Investigating Officer) at Exh.81.

6. The prosecution has also placed reliance upon various documentary evidence viz., panchnama of seizure cloth of the deceased at Exh.20, inquest

panchnama of the accused persons at Exh.21, inquest panchnama of the dead body of the deceased at Exh.22, receipt of handing over the dead body at Exh.27, inquest panchnama of the complainant as well as the deceased at Exh.32, map of scene of offence at Exh.34, chits signed by the panchas at Exhs.36 & 37, discovery panchnama at Exh.38, form at Exh.44, medical certificate at Exh.45, four X-Ray plats at Exhs.46 to 50, case papers of complainant at Exh.51, yadi written to P.S.I., City Police Station, Palanpur at Exh.52, transfer form at Exh.53, dying declaration at Exh.54, yadi written to Head Constable, Palanpur at Exh.55, P.M. Note at Exh.56, cause of death certificate at Exh.57, yadi written to Mamlatdar, Deesa for drawing map of scene of offence at Exh.59, map of scene of offence at Exh.60, forwarding letter to P.S.O. at Exh.62, medical certificate of P.W.No.13 viz., Ambaben at Exh.65, case papers of Deesa Government Hospital at Exh.66, medical certificate of Bhikhabhai Laxmanbhai at Exh.67, case papers of Bhikhabhai Laxmanbhai at Exh.68, age certificate at Exh.71, panchnama at Exh.72, ravangi note at Exh.73, yadi written to Mamlatdar, Deesa for drawing map at Exh.74, copy of FIR being Deesa Rural I-C.R.No.227/1992 at Exh.75, receipt of

F.S.L. at Exh.77, notification at Exh.79, complaint at Exh.82, yadi written to Executive Magistrate at Exh.87 and copy of register of incoming phone calls at Exh.84.

7. After filing of the closing pursis at Exh.87, Learned Judge recorded the further statements of the accused persons under Section 313 of the Criminal Procedure Code of each appellant-accused and after hearing the learned counsel appearing for the respective parties, the learned Additional Sessions Judge, Banaskantha at Palanpur was of the view that the prosecution has successfully established the guilt against the appellants-accused for having committed offence, for which, they were charged and, therefore, he accordingly, passed the order of conviction and sentence against the appellants-accused as stated hereinabove.

8. Being aggrieved by the conviction and sentence awarded by the trial Court, the appellants-accused have preferred this appeal.

9. We have heard learned counsel, Mr.Yogesh S. Lakhani for the appellants-accused and learned Additional Public Prosecutor Mr. R.C. Kodekar for the State. We have been taken through the record and proceedings by both the sides.

10. Mr.Lakhani, the learned counsel who appears on

behalf of the appellants-accused has contended that the learned trial Judge has committed a grave error in recording the judgment and order of conviction and sentence. First contention raised by the learned counsel, Mr.Lakhani is regarding the eye witnesses and for which he took us through the evidence of three prime witnesses, upon which, reliance has been placed by the prosecution, more particularly, P.W.No.1 viz., Bhikhabhai Laxmanbhai, who is complainant, injured eye witness and the husband of the deceased, Ambaben. According to him, while proceeding towards Deesa Hospital due to sickness of the wife of the complainant, when he and his wife were sitting at Talegadh's patiya and waiting for public transport, the appellant-accused came in a camel cart armed with deadly weapons and assaulted him and, hence, the deceased tried to intervene to save her husband by putting her body upon the body of the complainant and, therefore, the appellants-accused have also given blows to her and as a result of that, she succumbed to the injuries in the hospital and the complainant has received severe injuries. As far as P.W.No.2 viz., Reshamben Ratubhai, Exh.24 is concerned, she came to the scene of offence with her husband as son of P.W.No.5 came home and informed regarding the

incident and, therefore, they are the witnesses of incident. Simultaneously, as per the prosecution, P.W.No.3 viz., Ranashibhai Ratubhai, Exh.25 is also a witness of incident. According to him, as it was holiday, he was playing near the scene of offence and saw the incident in detail. First, he shouted for help and thereafter went to the agriculture field of the complainant, Bhikha to inform his son viz., Pira (P.W.No.4) and narrated the incident before him also. As per the prosecution case, his statement has been recorded by the Investigating Officer at the earliest point of time i.e. on the same day and, therefore, according to the prosecution, all the above referred witnesses are the witnesses of incident and they have supported the say of the prosecution in toto. The Court below has dealt with the same in paragraph no.18 of the judgment. The learned counsel for the appellant-accused has vehemently argued that P.W.Nos.2 and 5 are not the witnesses of the incident. As far as P.W.No.3 is concerned, there are lot of contradictions, omissions and improvement in his evidence and, therefore his evidence cannot be believed at all. It is also argued that as far as P.W.No.1, complainant is concerned, he is an interested witness. There was enmity between the

appellant's family and the complainant – Bhikhabhai, who was taking side of the cousin brother of the appellant in their civil as well as criminal disputes and, therefore, just to help them, the complainant has falsely involved all the family members of the appellants into crime in question because of the enmity. After reading the oral evidence of the above referred witnesses in detail along with the complaint in question, he argued that even the Court below has also not believed the P.W.Nos.2 and 5 as a witness of incident, but only believed to the extend that they came scene of offence after hearing shouts of P.W.No.5 after the incident is over and when the accused persons started leaving the place along with weapons in a camel cart. The Court below has also believed that they are witnesses of the incident to that effect only and they have only seen the accused persons leaving the place in a camel cart after the incident. As far as P.W.No.3 is concerned, it has been argued that he is a chance witness and his name has not been narrated into the FIR by the complainant and, therefore, his evidence is required to be discarded. Learned counsel, Mr.Lakhani has placed reliance upon the judgment reported in 2004(13) SC 308, more

particularly, Head Note-A, which reads as under :-

“Criminal Procedure Code, 1973 – S. 154 - Names of all the witnesses not required to be mentioned in FIR – Non-mention of names of all the witnesses by itself cannot be a ground to doubt their evidence.”

11. Learned counsel for the appellants-accused has further raised the contention regarding the motive. It has been argued that the family of the accused no.6, Galaba Shankala and their cousin brother had civil dispute and for that civil litigations were going on into the Court and as a counter blast, certain criminal complaints were also filed by both the parties and same were going on into the Court. According to Mr.Lakhani, the complainant had relation with the cousin brother of the appellant with whom, the complainant used to accompany even in the Court proceedings also and, therefore, in the incident took place in the early morning, they have falsely involved all the family members of Galaba into crime in question. According to him, they have been assaulted by some unknown persons.
12. Another contention raised by the learned counsel for the appellants-accused is regarding the discovery of weapon. It has been argued that even

as per the panchnama, Exh.38, all weapons have been found out at the instance of the accused no.3 viz., Popat and, therefore, it cannot be said to be a discovery panchnama as far as other accused are concerned. It is also argued that out of three dharias, two dharias are having blood stains and as far as muddamal sticks and axe are concerned, no blood stains have been found on them. After taking us through the FSL report, Exh.78, it has been argued that as per the opinion of the FSL, the blood stains found on the weapon are of human blood, but the FSL expert could not decide the blood group except the blood stain found on the stick, upon which, they have found the blood group of 'A', which is the blood group found on the clothes of the deceased and, therefore, according to him, in absence of opinion on blood group on certain weapons, a doubt is created and, hence, the benefit should go to the accused.

13. Next contention raised by the learned counsel for the appellant is that in this incident, the prosecution has not examined any independent witness. It is also argued that a person of another community viz., Viha Jetha, who is having agricultural field very near to the scene of offence and whose statement has been recorded has

not been examined by the prosecution. They have also not recorded the statements of other witnesses and, therefore, the prosecution is hiding something. In view of the aforesaid, it is requested that the applicant be acquitted.

14. Mr. R.C. Kodekar, learned Additional Public Prosecutor, who appears on behalf of the respondent-State took us through the reasoning of the learned Additional Sessions Judge and submitted that no interference is called for as the prosecution has established the case against the appellant-accused beyond reasonable doubt. Learned A.P.P. has submitted that the arguments advanced by the learned counsel for the appellants-accused are about the motive for killing the victim and serious assault on the complainant. It is also submitted that as the complainant used to accompany the opposite party of the appellants, the appellants believed that he is the person, who comes in their way of settlement between the parties and, therefore, Ambaben has been killed by them. According to him, it is a motive behind the commissioning of offence. Learned A.P.P. has taken us through the paragraph no.20 of the judgment, wherein it has been dealt with by the Court below

in detail. It is also submitted that it is established from the evidence on record that the prosecution has recorded the statement of Viha Jetha, but as he was not the witness of incident, he was not examined. As far as other witnesses are concerned, it has come out from the evidence of the Investigating Officer that they are also not the witnesses of incident. If there are agriculture fields very near to the scene of offence, but nothing has been established that it was very near to the scene of offence so that the person can rush to the spot and, therefore, though there were persons having their agriculture field very near to the scene of offence then also, they were not made as witnesses as they were not present at the time of incident and, hence, their statements are not required to be recorded and if recorded then, they are not required to be examined because they do not support the case of the prosecution.

15. We have gone through the oral as well as documentary evidence shown to us by the learned counsel for the respective parties and the reasoned judgment delivered by the Court below. We have also gone through the judgment relied on by the learned counsel for the appellants. Keeping in mind the law

laid down by the Apex Court in the judgment relied, we proceed with the matter. As far as the contention raised by the learned counsel for the appellants-accused regarding the eye witnesses is concerned, it is required to be noted that the Court below at paragraph no.18 of its judgment has discussed the evidence of all the witnesses in detail and also dealt with other aspects of the matter and has come to the conclusion that the presence of the complainant cannot be discarded at the time of incident in view of the fact that he also received serious injuries in the crime in question and his wife succumbed to the injuries sustained. There are evidence on record that both were taken from the scene of offence to the hospital and, therefore, the Court below has come to the conclusion that when the complainant along with his wife were waiting for public transportation, the accused persons came armed with deadly weapons and assaulted him on various part of the body and number of injuries have been received which also support the say of the prosecution and also establish his presence. Not only that, at the earlier opportunity, he gave complaint narrating the incident in detail along with the name of the accused persons and also respective role played by

them by using weapon. As far as non-mentioning the name of P.W.No.3 is concerned, he was playing very near to the scene of offence and on that ground alone, his evidence cannot be discarded nor can we come to the conclusion that he is not the witness of incident nor present there. What is required to be mentioned in the FIR is well established aspects of the matter. However, in this case, FIR has been given in detail, wherein the name of P.W.No.3 is not necessary to be mentioned at all and if at all, necessary, then also, looking to the condition, if the complainant could not give the name of the P.W.No.3, his evidence cannot be discarded as stated above. The fact to be kept in mind is that he i.e. P.W.No.3, is the person who was at the place and witnessed the incident. He went to call their parents and the son of the complainant and his statement has been recorded on the same day and, therefore, it cannot be said that he is a got up witness. The P.W.Nos.1 and 3 have been thoroughly cross-examined before the Court below, but nothing contrary has come out so as to weaken their evidence. Not only that, the Court has categorically mentioned in its judgment at paragraph no.18 onwards that the alleged contradictions and omissions qua P.W.No.3 had not

been proved by the other side. We have also independently evaluated the evidence on record of the above referred witnesses and we are of the opinion that they are trustworthy and as far as P.W.Nos.1 and 3 are concerned, they are the witnesses of incident. As far as P.W.Nos.2 and 5 are concerned, they are also at partly witnesses of incident because when they reached at the scene of offence, the accused tried to run away with deadly weapons and, therefore, they are the persons, who also reached at the scene of offence before the accused leave the scene of offence. It is required to be noted that even from the panchnama of scene of offence and from the evidence on record, it has been proved that the house of the P.W.Nos.2, 3 and 5 are very near to the scene of offence and, therefore, if they reached at the scene of offence, it is quite natural. It is to be noted that when Reshamben also tried to intervene, she received minor injuries, but she admitted in her cross-examination that she did not take any treatment and, hence, we are not in a position to come to a conclusion that she is not the witness of incident. It is also required to be noted that in this incident, one person, Ambaben has lost her life and the complainant has received injuries, therefore,

in a small village, everybody will be after it and she has ignored minor injuries and only on that ground, her evidence cannot be discarded. Therefore, we are of the opinion that the above referred witnesses are the witnesses of incident, more particularly, P.W.No.1 (the complainant, who is an injured witness and husband of the deceased) and P.W.No.3. As discussed above, P.W.Nos.2 and 5 are the witnesses of the incident as they went to the scene of offence and before the accused persons leave the place, they saw them and as discussed above that P.W.Nos.1 and 3 have seen the incident in question in toto and same has been narrated by them along with the role played by each accused. Looking to the charge they are facing, independent role is not required to be kept in mind. In such type of an incident where number of persons started giving blows with deadly weapon to the victim then, narration of the incident along with the role played by each accused persons is very difficulty to be mentioned, but the evidence to that effect would be there that all were there with deadly weapon and started beating the deceased as well as the complainant with deadly weapons. It is established principle of law that if the evidences of witnesses are trustworthy and free from all

doubts then, minor discrepancies are required to be ignored. If their evidence are believable, oral evidence of the witness can surpass the medical evidence to that effect.

16. As far as the contention raised by the learned counsel for the appellants-accused regarding the motive is concerned, we have evaluated the evidence to that effect and have also gone through the relevant discussion made by the Court below. We share the finding given by the Court below that though motive is not required to be believed in this case, the prosecution is also able to establish even the motive also. It is also established on the basis of evidence on record the documents including Exhs.75 & 76 etc.

17. As far as the contention raised by the learned counsel regarding the discovery of weapon is concerned, we have also gone through the arguments. The facts remain that the panchnama of discovery of weapon was drawn by the prosecution through concerned Police Officer. As far as the incident in question is concerned, there are direct evidence of eye witnesses that the appellants-accused armed with deadly weapons were present there and number of blows were given to the victims. When we are having such strong satisfactory evidence of eye

witnesses, if the blood group of the blood stains found on the weapons voluntarily produced by the accused could not be decided, the evidence of eye witnesses cannot be thrown away. We can, however, say that same has been produced by the appellant-accused at initial stage for taking disadvantage at a later stage, which cannot be permitted especially when we are having sufficient evidence of eye witnesses on record.

18. As far as contention raised by the learned counsel, Mr.Lakhani regarding independent witness is concerned, it is also required to be noted that the P.W.Nos.2 and 5, the husband and wife came to the scene of offence and others did not. For that, there are detailed discussion in the impugned judgment, which establish that when P.W.No.3 shouted for help by going home, both came to the scene of offence and there are no evidence on record that others were there. As far as the suggestion made by the learned counsel for the appellants-accused before the Court below that the incident took place in the early morning, but people came to know at about 10 o'clock and, therefore, they have falsely involved the appellants into the crime in question is concerned, the theory is required to be discarded in view of

the evidence on record, which shows that when the victims were taken to the hospital, blood which came out from injuries were very fresh. In short, we have evaluated the evidence on record minutely and more particularly evidence of the P.W.Nos.2, 3 and 5 and we are of the opinion that the P.W.Nos.1 and 3 are the witnesses of incident and incident took place in their presence and, hence, the evidence of both the witnesses cannot be discarded. As far as P.W.No.1 is concerned, as discussed above, he has received various injuries on his body and he has been saved because his wife, Ambaben (the deceased) tried to intervene for the purpose of saving her husband and for that, she fallen on the body of the complainant and as a result of that, she received various injuries on vital parts of her body due to blow given by the accused persons and, hence, she succumbed to the injuries. It is required to be noted that the witnesses and the assailants are from the same village and from the same community and they know to each other and incident in question took place in broad day light at about 10:00 a.m., wherein the complainant and his wife Ambaben (deceased) were sitting at bus stop for the purpose of going to Hospital at Deesa due to sickness of his wife Ambaben (deceased),

where the appellants came there armed with deadly weapons and killed Ambaben (deceased) and caused severe injuries to the complainant. As far as other aspects of the matter are concerned, it has been established from the evidence on record that the son of the accused no.6 is staying very near to the house of the complainant and as wife of the complainant is sick, they started proceeding towards bus stand for taking treatment and the accused being from the same village must have knowledge to that effect and, therefore, they came there with ulterior motive with deadly weapons and assaulted the complainant and his wife, who were there without having any weapons in their hands and role of each and every person has been established in view of the above discussion and since they are the members of one family, contrary view cannot be taken when it has been established that they were there with deadly weapons and took active part in the crime in question.

19. In our opinion, therefore, learned Additional Sessions Judge has rightly appreciated the evidence on record by following the established canons of appreciation of evidence. We do not find any merit in this appeal so as to interfere with the findings

of the trial Court. We have gone through the judgment of the learned Additional Sessions Judge and find that reasonings adopted and conclusions arrived at by the learned Additional Sessions Judge are just, legal and proper and we are in agreement with the same.

20. In view of the above, there is no substance in the contentions raised by the learned counsel for the appellant-accused.

21. The appeal is hereby dismissed. The appellant-accused no.3 viz., Popat Galba Raval, appellant-accused no.4 viz., Pira Galba Raval and appellant-accused no.6 viz., Galba Shankala Raval are on bail and hence, their bail bond shall stand cancelled. They are directed to surrender before the Jail Authorities within 60 days from today.

(R.P.DHOLAKIA, J.) (M.D. SHAH, J.)

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